

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

EDUCATIONAL RIGHTS HOLDER ON
BEHALF OF STUDENT,

v.

EAST SIDE UNION HIGH SCHOOL
DISTRICT.

OAH CASE NO. 2013090024

ORDER DENYING MOTION TO
DISMISS AND ORDERING THE
PARTIES TO ATTEND A
RESOLUTION SESSION

On August 28, 2013, attorney Nicole Hodge Amey filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) on behalf of the Educational Rights Holder on behalf of Student (Student) naming the East Side Union High School District (District) as the respondent.

On October 7, 2013, attorney Jeffrey W. Maisen filed on behalf of the District a motion to dismiss Student's complaint due to Student's education rights holder's non-participation in a mandatory resolution session. On October 10, 2013, Student filed an opposition to the District's motion.

APPLICABLE LAW

A local educational agency (LEA) is required to convene a meeting with the parents and the relevant members of the Individualized Education Program (IEP) team within 15 days of receiving notice of the Student's complaint. (20 U.S.C. § 1415(f)(1)(B)(i)(I); 34 C.F.R. § 300.510(a)(1).) The resolution session need not be held if it is waived by both parties in writing or the parties agree to use mediation. (34 C.F.R. § 300.510(a)(3).) If the parents do not participate in the resolution session, and it has not been otherwise waived by the parties, a due process hearing shall not take place until a resolution session is held. (34 C.F.R. § 300.510(b)(3).) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented, the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the complaint. (34 C.F.R. §300.510(b)(4).)

DISCUSSION

The District's motion, supported by the sworn declaration Mr. Maisen, who states that he had sent a fax to Student's attorney attempting to schedule the resolution session for September 16, 2013. Mr. Maisen also states that Student did not attend a resolution session scheduled for September 16, 2013.

The District filed its motion after the end of the 30-day resolution period, which dates from the filing of Student's complaint.

Student contends in his opposition that the September 10, 2013 fax was misfiled by her office so that Student was not aware of the offer to hold the resolution session for September 16, 2013. In her declaration, Ms. Hodge Amey declares that Student's advocate attempted to contact Mr. Maisen in an attempt to resolve the matter. Mr. Maisen failed to respond to the advocate. Thereafter, Ms. Hodge Amey contacted Mr. Maisen by email in an attempt to resolve the matter. Mr. Maisen never informed of a scheduled resolution session.

Student's parent is required to participate in a resolution session before a due process hearing may be commenced, and OAH has discretion to dismiss the matter if the parent refuses to participate in a resolution session and the district provides appropriate documentation supporting its motion to dismiss.

The District has failed to establish that it made reasonable efforts that to obtain Student's parent's participation in the resolution session because the District's counsel failed to inform Student's advocate and attorney of the missed resolution session and made no attempt to re-schedule it. Student has provided OAH with adequate reason for failing to participate in a resolution session within 30 days. Therefore, the District's motion to dismiss Student's complaint is denied. A resolution session shall be held within seven (7) business days from the date of this order.

ORDER

1. The District's motion to dismiss is denied.
2. All previously set dates in this matter are vacated.
3. The parties are ordered to participate in a resolution session within seven (7) business days from the date of this order.
4. The timelines for hearing shall recommence on the date of this order and OAH shall issue a new scheduling order.

IT IS SO ORDERED.

Dated: October 10, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings